IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ACCURIDE ERIE, L.P., a limited partnership, Plaintiff	:	
v.	:	CV 05-169 Erie
INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL UNION 1186, a voluntary unincorporated association, Defendant	:	

Hearing in the above-captioned matter held on Friday, April 28, 2006, commencing at 2:24 p.m., before the Honorable Sean J. McLaughlin, at the United States Courthouse, Courtroom C, 17 South Park Row, Erie, Pennsylvania 16501.

For the Plaintiff:
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Reported by Janis L. Ferguson, RPR

I N D E X

THE COURT: This is the time we set for argument at Civil Action 05-169 Erie.

I've had an opportunity to read the briefs, I'm familiar with the case law. Essentially we're dealing with cross-motions for summary judgment. Accuride is moving to vacate an arbitration award, and International Union, Defendant, is essentially moving to confirm it.

It doesn't make one heck of a lot of difference who I hear from first, but since Accuride is the Plaintiff, let me hear what you have to say.

MR. MINER: Thank you. Your Honor, may it please the Court, my name is Fred Miner for Ryley Carlock & Applewhite, on behalf of Accuride Erie.

The case involves an arbitration award, Your Honor, as you're aware, and so the action rises or falls on whether the award should be enforced or vacated --

THE COURT: I don't mean to interrupt you, but as I understand it, by way of brief background, there had been a previous arbitration award where this very issue was addressed, and the issue, for the record, of course, is the -- the addendum, if you will, to I believe the 1997 or 1998 agreement wherein various Kaiser employees made an irrevocable decision, per the language of the contract, to opt out of the opportunity to obtain insurance coverage from their new employer, if you will, and remain with Kaiser.

The original arbitration award, as I understand it, was in favor of the company. And for the reasons that are set forth in the award.

Subsequent to that -- subsequent to that, the issue raises its head again. Now, now we're on to the arbitration award that forms the subject matter of this case.

Let me ask you a couple of questions about the award and the applicable legal standard. Would you agree that the legal issue here is whether or not, as that term is defined, the arbitrator's award draws its essence from the Collective Bargaining Agreement?

MR. MINER: That is the guiding standard in this case, Your Honor. You're absolutely right.

THE COURT: All right. And would it be fair to say, with perhaps certain exceptions, that an arbitrator is entitled to be wrong factually, and an arbitrator is entitled to be legally incorrect, but those two failures will not necessarily give a reviewing Court like me the power to unscramble the egg? Is that generally true as a proposition?

MR. MINER: Yes it is, Your Honor.

THE COURT: Okay. Now, here is my question: That was a long-winded way of getting to it. Let's put aside for the time being the arbitrator's ruminations about what

parties -- what the parties must have intended and what must have -- what makes common sense, and I want to focus on the other aspect of his decision, which was this: He looks at the new Collective Bargaining Agreement, he looks at the four corners of the agreement, and essentially he says -- his rationale goes like this: I look in vain for any mention of the irrevocability agreement that had existed as an addendum to the previous contract. The parties were capable of including it, the agreement is silent. The folks who want to partake of the benefits are eligible employees within its meaning.

Why -- even if he's wrong, why wasn't that decision based upon an interpretation of the Collective Bargaining Agreement?

MR. MINER: Your Honor, initially -- and I will respond immediately to your question. But initially I don't think that's -- I don't think it is necessary for the Court to ignore the reasoning of the arbitrator in order to justify what he did. And that's the guidance the Third Circuit has provided.

THE COURT: All right.

MR. MINER: But disregarding Page 2 of the reasoning, of the decision, the arbitrator relies on his implied understanding, his assumption, the assumed rational response to an irrevocable election. There is no rational

interpretation -- to put it another way, the decision isn't based on Article 32 of the current Collective Bargaining Agreement --

THE COURT: Is your position that the -- it may be a distinction without a difference, but is it your position that the award should be overturned because the arbitrator rewrote the contract, or is it your position that the award should be overturned because his interpretation, contractual interpretation, if you will, was so irrational as to be absurd?

MR. MINER: This is a case where the arbitrator has effectively ignored language in the agreement. And that is --

THE COURT: Of which agreement?

MR. MINER: Of the 2003 bargaining agreement. The parties' current agreement. Article 32 provides that eligible employees will receive medical benefits. Arbitrator Creo read the term "eligible" out of the agreement by saying that any employee, even an employee who has specifically, permanently, and irrevocably opted out of medical benefits, still is entitled to medical benefits under Article 32.

THE COURT: Here's a question, then, I have. Here is another issue. What is your position on this: Does a condition in a Collective Bargaining Agreement such as the

irrevocability condition which existed as an addendum, I believe, to the original agreement, can a prospective condition -- this is a legal issue -- in a CBA continue CBA's in the absence of an expressed incorporation or written continuation of the original agreement?

MR. MINER: Yes.

THE COURT: As a matter of law, as a matter of labor law?

MR. MINER: As a matter of federal common law of labor, the answer to that question is yes. In at least three cases, the Supreme Court has provided guidance on that issue and stated, for instance, in the Nolte case that a postexpiration assertion of a contractual right to severance benefits still is a viable claim that at least must be arbitrated.

Now, the issue came back up again more recently in the Litton Financial Services Printing Division case. Both of those cases are very clear that even in the postexpiration context, the duty to continue to arbitrate disputes over legal rights that arise under a collective bargaining agreement continues, presumptively continues after the expiration of that agreement.

THE COURT: Do those cases stand for the proposition that if you have a Collective Bargaining Agreement that prospectively provides and indefinitely

provides, if you will, for thus and so, in the absence of a rejection or retraction of that provision in subsequent CBA's, that provision, if you will, is subsumed within them, even though it's not a written part of it? Is that what your position is?

MR. MINER: As a matter of contract, if the parties provide for irrevocable rights under one Collective Bargaining Agreement, and a subsequent Collective Bargaining Agreement is silent on that same subject, those rights must continue beyond the expiration of the Collective Bargaining Agreement that contained them.

And that is particularly appropriate in this case, where we have an addendum that simply provides an opportunity for Kaiser retirees to make a one-time irrevocable election. The parties discussed the irrevocable nature of the election, agreed that would be irrevocable, and the Kaiser retirees actually signed forms that provide they are irrevocable, permanent.

THE COURT: All right. With that as background, the arbitrator goes to the Collective Bargaining Agreement, and he looks at it, and he says, this is the operative agreement; in my opinion, this is what controls. And for the reasons I just said, I don't -- he says, I don't find the provision.

Now, even if he's wrong, as a matter of

contractual interpretation, and if you're right, is that the kind of mistake I'm entitled to trump?

MR. MINER: If there were some other rational basis in the award and this were simply a supplemental justification for his decision -- in other words, his interpretation of the four corners of the document simply supplement some other conclusion that he has reached that would provide an acceptable alternative basis for the award, then it would not be appropriate to vacate the award.

THE COURT: But in this case, in 95 percent of these cases, as they come on to the District Courts, what's happening is that the arbitrator below hasn't made his decision on the basis of what he perceives to be the absence of something; he's made his decision on the basis of an interpretation of something that's already in the agreement. That's not what he did here. He concluded that the absence of a provision was controlling.

Now, why is that any different than him looking at a contract -- a term of the CBA which may be completely inappropriate and yet he's construing it? I would be stuck with that, wouldn't I?

In other words, I would be stuck with -- if we had a situation where he was being asked to construe what the term agreement means within the four corners of the CBA -- and let's assume he comes down with a position that

is -- borders on preposterous, but that's his best shot -- I might be stuck with that type of decision. Is that right?

MR. MINER: Just because the Court disagrees with the interpretation doesn't mean the interpretation should be vacated.

THE COURT: All right. Then where on the sliding scale of egregious error -- how do I know when something moves from the garden variety realm of arbitrator mistake of fact or law over which the Third Circuit tells me I have no control to remedy that, what is the litmus test for when something becomes so bad that I'm entitled to unscramble it?

MR. MINER: When the arbitrator's decision conflicts with the results of the parties' negotiations, as it does here. There may be a lot of gray area in cases where one must decide how serious an error is. But here, we're dealing with alleged interpretation of irrevocable elections and whether those elections should have continued beyond the expiration of the 1997 agreement.

THE COURT: This doesn't have any bearing at all on the resolution of this issue, but it's really background information for me, because I'm curious about it.

If I remember from the file, when Kaiser -- when it looked like Kaiser was going to go into bankruptcy and nothing good was going to come of that, at least in terms of the continuance of the retirees' medical coverage,

the company on its own approached the Union with an attempt to offer some type of accommodation. Is that right?

MR. MINER: Absolutely correct.

THE COURT: All right. And I can only assume that since we're here today, you weren't able to come to any kind of accommodation here.

But here's my question: From an economic impact standpoint, how is this impacting on your client? And how -- well, first answer that question. What is driving this -- if you were willing to accommodate it at one point, what is driving it from a dollars and cents standpoint today?

MR. MINER: Your Honor, this is not a dollars and cents case. That's just not what it is about.

THE COURT: All right, what is it?

MR. MINER: This is about the principle -- this is about whether the parties can live with the results of their negotiations. The company cannot live with an award that says that irrevocable, permanent elections are, in fact, contingent or conditional upon the continuation of benefits by some other party.

THE COURT: Whether it's of any legal moment or not, through resolution of the motion that is in front of me, wouldn't it have been cleaner if there was some reference in the new agreement to what had happened in the

old, just as a matter of good lawyering?

MR. MINER: I think that the parties --

THE COURT: In retrospect, what's the harm in doing it?

MR. MINER: In retrospect, there may have been no harm. Although the collective bargaining process can be very unpredictable, can be very intense and emotional at times.

THE COURT: True.

MR. MINER: But I think it's fair for the parties to rely on the irrevocable effect of irrevocable elections and to assume that when they say in Article 32 that only eligible employees will receive medical benefits, that an arbitrator subsequently will not come along nine months into the Collective Bargaining Agreement and say that some condition, the change of some condition that is out of the Company's control has somehow made employees who have been working in the plant, benefiting from their elections for more than seven years, that somehow those employees became eligible for benefits.

THE COURT: Listening between the lines, if you will, aside from a concern about setting a bad labor precedent, if you will, by voluntarily agreeing to accommodate these retirees -- and do you know how many there are who would be looking for benefits with Accuride?

MR. MINER: I do, Your Honor. It's not in the record.

THE COURT: Well, just --

MR. MINER: There are currently six active employees working in the plant who opted out of Accuride medical benefits who would be eligible for some benefits under the Creo award.

THE COURT: All right.

MR. MINER: In addition, there are approximately 13 to 14 former Erie employees who have been active employees since June 1st of 2004, and so would be eligible for some type -- presumably some type of remedy, again under Arbitrator Creo's award.

THE COURT: And, finally, once again, if -- and I just say if those -- if those people who had opted out were permitted to jump on the Accuride medical coverage bandwagon, would it cost you a cent?

MR. MINER: Your Honor, I appreciate the line of this question, and I would like the Court to know that I agree in many respects that this case is a case that never should have been arbitrated, it shouldn't be the subject of a Section 301 case today, it should have been settled in May of 2004 based on what the company proposed. But it wasn't.

THE COURT: Answer my question. Would it cost you a cent?

MR. MINER: It would cost the amount of the premiums that would have to be paid for these employees to be enrolled in Accuride's plan, so it would.

THE COURT: In the grand scheme of things, just to put the finest point on it we can, whatever that additional cost, given the fact that there's a relatively small group of people that are looking for this, would that, in the grand scheme of things, be infinitesimal? Would that be fair to say?

MR. MINER: I don't know that that's fair to say. There would be premium costs for these people. The experience history of these employees who are at issue are bound to be significant. These are older employees in the work force. They could increase the experience history for the entire plant --

THE COURT: It might not be in the record, but how big is the plant? Do you know?

MR. MINER: There are about 125 hourly employees. Since hourly employees all share the costs of medical benefits in the plant, that could mean higher medical costs for everyone in the plant, as well as the company.

THE COURT: Now, you know, I don't know that this is, but it could be; you know, the old saying, hard cases make bad law. But the people who are attempting to obtain the Accuride coverage, are they coverageless right now?

MR. MINER: Your Honor, there -- we don't know, to answer your question. I met with the Union just this last Tuesday to discuss this very subject, and what I heard from the Union was that they do not know what the coverage status is of these six employees. They do not know what the out-of-pocket costs might be for the other 13 or 14 --

THE COURT: Well, even if -- wouldn't they -- I mean, you had indicated that the company might have to pay some portion of these premiums. Don't the individuals have to contribute some portion toward their own premium coverage?

MR. MINER: Yes. Employees contribute 12 percent currently toward the cost of their coverage under the amended plan.

THE COURT: All right. Let me hear from your adversary.

MR. MINER: Thank you, Your Honor.

MS. TRAFTON: Good afternoon, Your Honor, Catherine Trafton for the UAW.

THE COURT: Yes. Isn't there something unfair about this, in this sense: I went back and read the agreement, the original addendum. And my goodness gracious, it could not be any clearer to me -- I mean, they almost put a flashing red light on that said, beware, beware, this is irrevocable, this is permanent, and you have one chance to

change it.

Now, clearly, years down the road, as things often happen, the landscape changed. Aren't you trying to undo something here that was very carefully crafted, simply because contrary to what people may have expected years before, something changed?

MS. TRAFTON: No, Your Honor, I don't think it's unfair and I don't think we're trying to change something under those circumstances. And I'm going to stick with what the arbitrator -- what his rationale is here, because that's what the law --

THE COURT: Let's do that then. Here is my question to you: Here is my question to you: Let's assume for the sake of discussion -- let's assume for the sake of discussion that the addendum which existed in the earlier agreement was placed in the latter agreement, all right, and let's also assume that the Union went forward anyways, challenging it, in part because of the change in circumstance, that Kaiser is bankrupt and they no longer have this second source -- are you with me so far?

MS. TRAFTON: Yes.

THE COURT: And let's assume that the -- that the -- I can't remember what this arbitrator's name was.

MS. TRAFTON: Creo.

THE COURT: Let's assume that Arbitrator Creo, his

decision was in your favor, and this is how it went: It was the second half of the decision he actually wrote. Rather than saying it's not included under the Collective Bargaining Agreement -- because under our hypothesis now, the underlying assumption is that the employees have some comparable benefits from a collateral source. It is against common sense to refuse benefits to these employees, now that they are no longer receiving benefits from a third party. That is his sole basis, his sole basis for finding in your favor. You'll recall in our situation, it was an independent basis, if you will, for finding in your favor.

My question to you is, does that reason draw its essence from the Collective Bargaining Agreement?

MS. TRAFTON: Yes, Your Honor, it does. And the reason that that decision draws its essence from the Collective Bargaining Agreement is that the arbitrator, as I read his decision, he looked at that contract, and he said basic contract interpretation principle is that agreements have to be read to fulfill the intent of the parties.

And I think to go back to what you said at the beginning about whether this is fair or not, I think this is important --

THE COURT: I'm not so sure fair -- I might have injected the wrong concept into it. I'm not so sure fairness has anything to do with it. I think what a clear

contract says may have everything to do with it.

MS. TRAFTON: Okay. So if we take a look at what the language of the waivers, let's call them, said, those waivers make no reference to the termination of coverage altogether. The arbitrator took a look at those agreements, he said, what were these parties trying to get at when they reached this.

This wasn't about -- and I think this is a really important point. This wasn't about asking these employees to take a gamble on whether this very important benefit would be provided to them in the future when the Union went to the company and said we'd like people who have the choice to be able to take that choice; either they stay with Kaiser or go with AKW. Our original proposal was that people be allowed to go back and forth. The company said to us, look, administratively, doing it once is difficult enough for us; we're not going to be able to allow people every time the benefit goes up over here to switch back and forth. And the language of that agreement, you know, refers to benefits becoming higher or lower. It doesn't say benefits terminating.

And so what the arbitrator did is he said that's not what this agreement was about. This agreement was about making sure that this was doable administratively --

THE COURT: Isn't the arbitrator at least in that respect doing precisely what Court after Court after Court in the very few times where they actually get in and change things, doing precisely what they say they shouldn't do? I mean, an arbitrator, if you have clear language in any prospective contract, no one can anticipate all of the vagaries and changes of life. One can presume if they had wanted to put something in there, they conversely could have done it.

I have never seen language that is more clear than permanent, irrevocable, one time; in essence, proceed at your own caution. To say that an arbitrator can do that -- and this is more of a rhetorical question, I want you to answer it -- doesn't that inject such a healthy dose of uncertainty in the labor contract relations that it would turn the CBA world on its head; no one could rely on anything?

MS. TRAFTON: Well, if I could, Your Honor, first of all, we have -- I mean, we sort of jumped very quickly to the sort of hypothetical, if this was the only basis upon which the arbitrator had made his decision --

THE COURT: Do you agree with me -- and I'm not going to ask you to fall on your own sword on that point, because I'm just not going to do it. But is it fair to say that you are putting most of your -- most of your eggs in

the arbitrator's basket, where he said, I'm reaching this decision on the basis that I do not find the provision in the new Collective Bargaining Agreement?

MS. TRAFTON: Yes, Your Honor, I think --

THE COURT: Is that a stronger position for you, in all candor?

MS. TRAFTON: In all candor, it is. I think that's the way for the Court to interpret the arbitrator's interpretation. Did he interpret the contract before him. He interpreted the contract based on his read of it, which he said does not include this provision.

THE COURT: Let me ask you this, and tell me if this makes sense to you or doesn't: Parties in Collective Bargaining Agreement in year one say henceforth and forever it will be unnecessary, it will be unnecessary for workers who work on the floor to wear protective glasses. It has nothing to do with this, but the principle is the same. You have a provision that says henceforth and indefinitely, no one needs to wear protective glasses. A new Collective Bargaining Agreement comes along and during the period of the second Collective Bargaining Agreement -- and by the way, everybody signed off on that, the Union and management, under the first Collective Bargaining Agreement.

A Union member is working on the floor, and a supervisor comes up and says to him you're fined a hundred

dollars because you don't have your glasses on. Says, what do you mean; three years ago we signed something that said in -- forever and ever and ever this is eliminated from the plan. Would the -- but it wasn't -- but there was no specific reference to it in the new Collective Bargaining Agreement. Who has got the better end of that argument at the arbitration? The foreman or the Union member?

MS. TRAFTON: The argument would be a question of contract interpretation. And it seems to me that Collective Bargaining Agreements are based on a term -- they always have a term. And they change. Each time -- well, sometimes they don't. Sometimes you carry the same exact --

THE COURT: Does it make any sense, if there's language in a Collective Bargaining Agreement that says forever, that -- does it make sense to interpret forever or indefinite, if you will, or permanent, as coextensive only with the term of that Collective Bargaining Agreement? Because I can tell you that three or four years is not forever, and three or four years is not permanent.

MS. TRAFTON: I think that it can. An irrevocable agreement could be read to be confined to the terms of the agreement. And I think it's reasonable as a matter of contract interpretation to take a look at what the parties intended in a situation and interpret that contract to interpret whether or not something is carried forward or

not. It seems to me that it would be a case-by-case --

THE COURT: Does this common law principle of contract construction circumscribe to some extent the discretion of an arbitrator? Is an arbitrator, in construing a contract for a CBA, bound by the same contract principle that I am? And that is where the terms of a contract were clear, the reviewing Court is obliged to enforce them as written, and it's inappropriate to look for parole evidence for the intent of the parties? Is the arbitrator bound by that same -- almost Hornbook principle of contract construction?

MS. TRAFTON: I don't think that an arbitrator is bound in the same way that a Court is, but I do think that absolutely arbitrators look to, you know, the -- the -- you know, the same Hornbook law that the Court would look to in terms of --

THE COURT: What is then ambiguous about the language that was used in conjunction with those employees who made a one-time irrevocable and also permanent decision to opt for Kaiser benefits, as opposed to Accuride? Where is the ambiguity in that language?

MS. TRAFTON: I'm not sure I would say it's ambiguity, but I would say what is missing from that language is -- I think that what the arbitrator did is look at the facts, and when the parties negotiated this

agreement --

THE COURT: Did he then submit -- did he then submit terms or conditions that the parties themselves did not include, but could have, if they chose to do so as part of their bargaining process?

MS. TRAFTON: I don't -- I don't think he inserted -- I don't think he inserted into --

THE COURT: Well, it wasn't there before, was it? Is there anything in there that says if there is a material change of circumstance some day or if benefits only become available from Accuride, the terms and conditions of this agreement insofar as it relates to the addendum are null and void? Is there anything --

MS. TRAFTON: I'm sorry; I may have misunderstood your question. The agreement does not contain that language.

THE COURT: So to that extent, he did insert it figuratively, didn't he?

MS. TRAFTON: He read the agreement with the parties' intent in mind, and he determined that that agreement was not meant to ask employees to gamble about whether they would have future coverage or not. That it was meant to fulfill a particular purpose, and that purpose had to do with what would happen if employees continually came in and out of coverage.

THE COURT: It would be fair to say that he implied, based upon his common-sense understanding, he implied a condition precedent to the ongoing vitality of that addendum which the parties themselves, for whatever reason, decided not to include; is that correct?

MS. TRAFTON: I'm not sure I would use the phrase that he implied a condition precedent.

THE COURT: Well, why not? Let's think about it. In his view, as I understand it -- and correct me if I'm wrong -- in his view, the collapse of Kaiser -- let me put it this way: The continuation of Kaiser and, therefore, its medical coverage program was a condition precedent to the continued vitality of that agreement. Is that a fair way to put it?

MS. TRAFTON: I would agree. I think that what the arbitrator decided was that because Kaiser went bankrupt and that terminated coverage for these individuals, that that agreement failed its purpose, because the purpose --

THE COURT: All right. Fundamentally.

MS. TRAFTON: Yes, I would agree with that.

THE COURT: Now, what does this all mean to your people as a practical matter? In asking the question. I'm not suggesting for a minute that the appropriate resolution of this turns on that, but sometimes it's useful just to get a feel as to why a case gets as far as it has.

MS. TRAFTON: Well, what it means to our -- it's quite practical, what it means to our individuals. And I can't -- you know, we had gathered information early on in the process about what people had been paying out for coverage, but that, you know, information is not up to date, so I can't tell you dollar figures what it matters to individual employees. But as a result of not being covered by Kaiser or Accuride, those individuals have had to seek coverage on their own. And for some people that has meant literally paying flat out, out-of-pocket expenses, and for some people that's meant having some alternative coverage through a spouse or some forth.

I can't give you specific care people haven't been able to get, but it has left people who had full health coverage without it and to find their own way to get it.

THE COURT: So insofar as the Union is concerned -- I'm not putting words in the Plaintiff's mouth -- are you fighting over principle too or are you fighting something over more than that?

MS. TRAFTON: We have two folds. We're here for two reasons. Certainly we do fight when we feel our agreements have not been lived up to and the company says it can't live with this arbitrator's decision, but we would say we reached an agreement. We agreed to be bound by what this arbitrator said, so there is a principle here which

certainly is when a company refuses to comply with an arbitration award, we will seek to enforce it.

But quite frankly, practically speaking, we are here because there are people who don't have the health insurance coverage that they need, and we are seeking to get that. And, you know, the company's proposals to settle the case -- well, they are not going to settle the case. What the company offered early on isn't sufficient.

THE COURT: This isn't part of the record, but if you know, was there some perceived economic advantage or service advantage or some type of advantage to those people who decided to remain with Kaiser and not take the new coverage when it became available? Do you know?

MS. TRAFTON: I don't know, Your Honor. I don't know the specifics of what those benefits --

THE COURT: That's outside your institutional memory of this case.

MS. TRAFTON: Indeed.

THE COURT: Is that right?

MS. TRAFTON: Yes.

THE COURT: All right, thank you. Is there anything else you want to say to me? Because I want to have a chat with both you folks in my chambers when we're done here. Anything you want to say to me on the merits?

MR. MEREDITH: Your Honor, we have not had an

opportunity to address the subject of the timeliness of grievance.

THE COURT: Well, you can talk to me about that, but -- and while I have no fixed opinion on it, it sure looks to me that that likely draws its essence from the Collective Bargaining Agreement, whether he's right or wrong, but that isn't my primary focus here, to be quite honest with you.

MR. MINER: Thank you, Your Honor.

(Discussion held off the record.)

(Hearing concluded at 3:09 p.m.)